

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BC MEDIA FUNDING COMPANY II,

Plaintiff

08 CV 6228 (RPP)

- against -

**OPINION AND ORDER**

FRANK LAZAUSKAS, MICHAEL L. METTER,  
LEONARD F. MOSCATI and B. MICHAEL PISANI,

Defendants.

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**ROBERT P. PATTERSON, JR., U.S.D.J.**

By papers dated November 14, 2008, Plaintiffs<sup>1</sup> moved for a Court Order pursuant to Federal Rule of Civil Procedure 54(d) awarding Plaintiffs attorneys' fees and costs totaling \$202,475.62.

Under the Financing Agreement between Media Funding Company ("Lender"), BC Media Funding Company II ("Agent" or "Plaintiff"), and Businesstalkradio.net ("BTR"), BTR was obligated to pay "on demand...all costs and expenses incurred...[by the Agent or the Lender]...including, without limitation, fees, costs, client charges and expenses of counsel." (Financing Agreement Section 10.04, Declaration of Anthony DiSarro dated November 14, 2008, Ex. A.) The Financing Agreement covers attorneys' fees and cost incurred in connection with "the commencement of...any court proceedings arising from or relating to this Agreement, or any other Loan Document." (Id., Section 10.04(e).) The Financing Agreement defines Loan Documents to include "any Guaranty, any Security Agreement...and any other document executed and delivered

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<sup>1</sup> By an Opinion and Order issued by this Court on February 6, 2009, Plaintiff Media Funding Company was dropped from this case pursuant to Fed. R. Civ. P. 21.

pursuant hereto or thereto or otherwise evidencing or securing the Term Loan or any other Obligation.” (Id., Section 1.01.) “Guaranty” is defined to include the “Individual Guarantees,” which means “each Guaranty, made by each of the Individual Guarantors in favor of the Agent for the benefit of the Lender.” The individual Guarantors are the Defendants in this case. Accordingly, the Defendants are liable to BC Media Funding Company II for its attorneys’ fees and costs incurred in this case so long as Plaintiff has shown that those fees and costs are reasonable. Chinatrust Bank (U.S.A.) v. Pinter, No. 04-CV-5331, 2008 WL 2987152 at \*2 (E.D.N.Y. July 31, 2008) (awarding attorneys’ fees and costs to plaintiff pursuant to language of guarantee); F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d 1250, 1263 (2d Cir. 1987) (applying New York law based on choice of law provision and awarding attorneys’ fees pursuant to agreement).

On this application, Plaintiffs have submitted biographical information for Ms. Gorycki, an associate who has practiced law for six years, and Mr. DiSarro, a partner who has practiced law for twelve years. However, Plaintiffs have failed to provide biographical material for any other “attorney/other professionals” in order to show that the rates charged are reasonable. (DiSarro Decl. Ex. E-F.) The moving affidavit states that the rates charged are reasonable in view of the prevailing market rate but does not state that the rates charged for each attorney/paralegal are at the rates charged other clients of the firm. Furthermore, it appears that some of the “attorneys/other professionals” were utilized to perform non-professional duties. See 10/08/08, M. Saget by hand delivery. 1 hour. Bill at \$145.00 plus local transportation. \$400. If the firm seeks to recover for the services of its docketing department, the moving affidavit should show that other clients are billed for these non-professional services at the same rates.

Accordingly, Plaintiff's application is denied without prejudice to Plaintiff filing a new application in accordance with this opinion.

IT IS SO ORDERED.  
Dated: New York, New York  
February 18, 2009

A handwritten signature in black ink, appearing to read "Robert P. Patterson, Jr.", written over a horizontal line.

Robert P. Patterson, Jr.  
U.S.D.J.

***Copies of this Opinion & Order faxed to:***

***For Plaintiff:***

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